

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANNE KELLEY and KENNETH HANSEN,)	
)	No. C07-475 MJP
Plaintiffs,)	
)	MICROSOFT'S MOTION FOR
v.)	ENTRY OF PROTECTIVE
)	ORDER
MICROSOFT CORPORATION, a Washington)	
corporation,)	Note on Motion Calendar:
)	
Defendant.)	September 25, 2007
)	

Microsoft has reviewed the Court's September 13, 2007, Order denying the parties' Stipulated Protective Order and has revised the Stipulated Protective Order to comply with the Court's Order.¹ In particular, to implement the Court's directions, Microsoft modified Paragraph 13 of the Stipulated Protective Order as follows:

¹ Although the Court's preference is now clear, the Court deserves an explanation as to why the parties requested entry of the Stipulated Protective Order in a form that contemplated conditional filing under seal where the party filing the documents was *not* the party (or non-party) that had designated the documents as confidential. Microsoft believed the party seeking protection should be responsible for the motion to seal because: (1) the party seeking protection should bear the burden of preparing the papers on the motion, and (2) the party seeking to have the record sealed bears the burden of persuasion and therefore should have the opportunity to file a reply. Other judges in this district have entered Protective Orders using similar procedures for conditional filing. *See, e.g., Blaylock, et al. v. First American Title, et al.*, No. 06-1667 JCC, Dkt. No. 18 (Jan. 4, 2007) (Judge Coughenour); *Miller v. Holland America Line, Inc.*, No. 06-1363 RSL, Dkt. No. 17 (June 1, 2007) (Judge Lasnik).

13. If a party wishes to use “CONFIDENTIAL” material to support or oppose a motion or at trial, the following procedures shall apply:

(a) The party submitting the material shall submit to the Court a motion to seal pursuant to CR 5(g)(2) contemporaneous with the filing of the “CONFIDENTIAL” material and shall adhere to all requirements in CR 5(g)(3) for filing such material under seal.

(b) If the disclosing party or non-party is not the party filing the motion to seal, then the disclosing party or non-party shall make the showing required by CR 5(g) in its response to the motion.

(c) Any motion to seal filed under any subsection of this Paragraph 13 shall be noted for consideration not less than fifteen (15) judicial days after filing.² The Clerk of the Court shall maintain the “CONFIDENTIAL” materials under seal until the Court rules on the motion to seal, subject to the provisions of the following Paragraph.

Microsoft presented this revised Protective Order to the Plaintiffs for their agreement and signature, given that the Court “direct[ed]” the parties to revise their agreed Protective Order to use the procedure for filing under seal set forth in CR 5(g). As more particularly detailed in the Declaration of Stephen M. Rummage, filed along with this Motion, Plaintiffs declined to stipulate to the revised Order. Because the proposed Protective Order reflects the parties’ written agreement, modified to implement the Court’s direction, Microsoft requests its entry.

DATED this 14th day of September, 2007.

Davis Wright Tremaine LLP
Attorneys for Microsoft Corporation

By /s/Stephen M. Rummage, WSBA #11168
Cassandra Kinkead, WSBA #22845
Charles S. Wright, WSBA #31940
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
Telephone: (206) 622-3150
Fax: (206) 757-7700
E-mail: steverummage@dwt.com
cassandrakinkead@dwt.com

² Microsoft requests this period of time for the motion to seal to be filed because the parties by definition simultaneously will be briefing the substantive motion with respect to which the confidential materials have been offered.

Of Counsel:

Charles B. Casper
Patrick T. Ryan
Montgomery, McCracken,
Walker & Rhoads, LLP
123 S. Broad Street
Philadelphia, PA 19109
(215) 772-1500

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Davis Wright Tremain LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2007, I electronically filed the foregoing Microsoft's Motion for Entry of Protective Order with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jeffrey I. Tilden:	jtilden@gordontilden.com
Jeffrey M. Thomas:	jthomas@gordontilden.com
Michael Rosenberger:	mrosenberger@gordontilden.com
Mark A. Wilner:	mwilner@gordontilden.com
William C. Smart:	wsmart@kellerrohrback.com
Mark A. Griffin:	mgriffin@kellerrohrback.com
Ian S. Birk:	ibirk@kellerrohrback@dwt.com

DATED this 14th day of September, 2007.

Davis Wright Tremaine LLP
Attorneys for Defendant
Microsoft Corporation

By /s/ Stephen M. Rummage
Stephen M. Rummage, WSBA #11168
Davis Wright Tremaine LLP
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
Telephone: (206) 757-8136
Fax: (206) 757-7136
E-mail: steверummage@dwt.com